

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

MARVIN SMITH,

Plaintiff,

v.

CIVIL ACTION NO. 2:07-cv-00693

CHARLES T. MILLER, et al.,

Defendants.

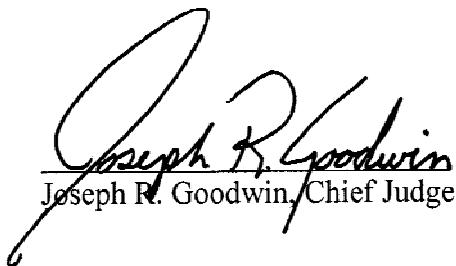
ORDER

Pending for the court is the plaintiff's Application to Proceed Without Prepayment of Fees and Costs [Docket 8]. This action was referred to the Honorable Judge R. Clarke VanDervort, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted Proposed Findings and Recommendation [Docket 15], recommending that the court **DENY** the Application and **DISMISS** the plaintiff's complaint and remove this matter from the court's docket. Neither party has filed objections to the Magistrate Judge's findings and recommendations.

The failure to object to a magistrate judge's report may be deemed a waiver of appeal of the substance of the report and the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983); *Campbell v. United States D. Ct. N.D. Cal.*, 501 F.2d 196, 206 (9th Cir. 1974). The court has reviewed the Magistrate Judge's findings of fact and recommendations and finds no clear error on the face of the record. Therefore, the court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and orders judgment consistent with the findings and

recommendations. The court **DENIES** the plaintiff's Application to Proceed Without Prepayment of Fees and Costs [Docket 8], and **DISMISSES** the plaintiff's complaint. The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: August 27, 2009



Joseph R. Goodwin, Chief Judge